Mr. K. M. Ibrahim *(Cranganur):* I beg to move that the Bill may be taken up and finally passed to-morrow.

Mr. V. K. Kutty *(Nominated):* I second it.

Motion put and carried

The Cochin Specific Relief Act (Amendment) Bill

* **Mr. K. Narayana Menon** *(Mulakunnathukavu):* I beg leave to present the Select Committee Report on the Cochin Specific Relief Act (Amendment) Bill and move that the Bill may be kindly taken into consideration. At the hands of the Select Committee the Bill has not undergone any serious change except that a right of appeal which was in the original Act was thought to be unnesessary since or orders are issued under the section by the Hon'ble the High Court and further appeal was thought not wise or necessary. The other amendment which was sought was to add a few more to the exceptions exercising the jurisdiction of the High Court. The other amendment that is sought is not anything which can be made in this Act without relation to the covenants of His Highness the Maharaja in relation to the Government of Cochin. That of course is something which has to be done in the Government of Cochin and the Select Committee has submitted that opinion of theirs in paragraph 3. There is no substantive or substantial amendment and I submit that the Bill as modified by the Select Committee may be kindly taken into consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I oppose the motion for consideration of the Bill by this House as reported upon by the Select Committee. In doing so, I only wish to invite the attention of the House to the various objections raised by the Government on the floor of the House at the time of the introduction of this Bill. The first objection to the Bill is that the High Courts of Bombay, Calcutta and Madras which possess this power are courts with original Civil jurisdiction. The High Court of Cochin is not a court of original Civil jurisdiction. No analogy can therefore be rested on the ground that the High Courts of Madras, Bombay and Calcutta are exercising these powers under the specific Relief Act. The other High Courts in British India do not enjoy this power. The letters patent granted to the High Courts of Madras, Bombay and Calcutta expressly preserve the power to issue writs of mandamus. It was pointed out that anything that has not been reserved by His Highness the Maharaja should be taken to have been offered on the High Court in the matter of judicial administration. In the matter of interpretation of treaties, you will find the general rule to be that whenever a sovereign does not part with his fundamental rights, they are presumed to be in specific terms, reserved with the sovereign. No specific powers to issue writs of mandamus have been conferred on the High Court of Cochin. It cannot therefore be said that the power has been conferred. No such power has been conferred on the High Courts situated in Indian states. I pointed out that in Hyderabad, Travancore and Mysore these provisions are deleted in the Specific Relief Act. When this Government framed the Cochin Specific Relief Act the question was specifically considered and it was resolved to delete the Chapter. I need not recapitulate all the points threshed out on the previous occasion since both sides of the House have already formed definit views on this Bill. I oppose the motion.

***Mr. A. B. Salem** *(Mattancheri):* I rise to support the Bill. I am surprised that the learned Advocate-General has thought it fit to say that this Bill should be opposed or advised the Government that this Bill should be opposed. The judiciary is the strength of the democracy and the judiciary ought to possess all powers known to the law. I cannot understand the attitude of the Government to say that they will not prove that implicit trust in the judiciary which ought to be placed on them. The absoulte exercise of powers is not to be authorised in the State. I cannot understand why officers of Government should not support the idea of putting their actions sometimes to the examination and consideration of the judiciary, who would always be dignified and calm. It is not only public officers of Govenment that would come under mandamus order. There are many corporations and companies formed in the State to whom also such mandatory orders sometimes become necessary to be issued. What about them? I challenge the Hon'ble the Advocate-General to see if there have been any jundicial powers reserved by the Soveriegn Maharaja here which has not been given out to the Courts. I shall go seriatum with his statement. The High Court of Cochin has only original jurisdiction. I dispute that statement according to my knowledge the High Court was the very first Court established in the land called the Valia Court. If there was a case, the suit had to be filed in

* Speech not corrected by the Hon'ble Member.

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the Valia Court and not in the Cheria Court. I know for certain that if my learned friend would dive deep into the unrepealed Regulations we will find this statement to be correct. You will find it specifically stated that the Court in Cochin originated from the King. It is like the King's Bench Court. Whatever might be the fate of Mysore, Hyderabad, etc. I am not concerned. I am concerned only with Cochin and the proper working of it in the State. I say these powers should be vested in the judiciary and I cannot entertain any lawyer to say it should not. Treaty and law are two different things. In treaty judiciary does not come in at all. Here we are asked examine the law. If a law has been violated who is the best authority to examine whether it is a violation or not. Is it the executive? The executive which violates has to be examined by another executive. Certainly no. If the executive has gone wrong the examination must be by the judiciary and people cannot submit their legal rights to the examination of another executive. It is very easy to say that any matter which takes place in Chittur can be brought to the executive in 2 hours. That is not the point. We want an authoritative judicial pronouncement whether A is wrong or B is wrong. That is the point. There is no authorisation of treaty and the law full prevails.

Then again writ. Writ mentioned in the Constitution Act of Cochin does not indicate anything more than the ordinary process of the Judical Courts. Why? Summons is mentioned here. Why did he mention. Process is mentined and writ is also mentioned. There is a difficulty to give a twist to the word. It is only an ordinary word for summons. That is the difficulty. As I pointed out, these are mouth pieces. We want real persons. Here we get a lawyer to say something which is absolutely illegal an opinion which anybody would laugh at. He is made to say. Outside people will not understand it. Why he is saying. He is asked to say. Therefore it is that I say that no Government servant should come here.

Then comparison between native States and Cochin. We are not prepared to accept those things. If one little area can be governed in the best manner possible with honour and dignity added to these Courts, that will be the honour of Cochin. Bishop white, years ago said if there is an area where the experiment of self Government can be tried, in full, that area is Cochin State where people are law abiding, considerate and educated. To say to an educated State that these powers should not be vested in the judiciary is to my mind a very, very regrettable thing.

Then, Sir, it is said that there is no necessity. The Maharaja has got absolute powers. Our Maharajas have been constitutional always. When they parted with judicial powers they did not make any reservation. We had one real appellate court. Even that has been abolished. Supposing an order is passed by the executive wrongly and we want to rectify it from the court. Have we got the right to go to the Maharaja. Is it not our fate to stand up and suffer that order. To-day that is the case. If the Judiciary has pronounced a verdict and if you are not content with that verdict there will be a real appeal to the Maharaja in every case. There will be a second appeal to His Highness. Is that the position that you want us to come to? That is what he said. An order can be revised by putting in a petition to His Highness the Maharaja. He has to exercise his absolute powers to say that the position is wrong and he should revise it. Where is His Highness going to seek advice. Who is to go advice to the Maharaja in matters of law. Maharajas of Cochin are not lawyers. Who is to advise him. Ultimately it will be the Diwan. In other wards the highest judicial pronouncement comes to the executive again to revise it. That is why in the Royal Court, the Diwan sat. His Highness did not sit. Appeals have been filed against the orders of the Chief Court in the Royal Court. The president of the Royal Court was the Diwan. That is why that was abolished. You are going to take us backwards. Cochin is being taken 20 or 30 years back. That is a proposition to which we cannot agree. I have told you there are very many cases in which my contention is that these powers are there. I will try also once again. I have got two mandamus petitions to the Court. In one they said there is no jurisdiction according to their opinion in which my learned friend himself appeared. In another case, one Judge said, I think there is no jurisdiction, and if there is we shall assume jurisdiction. Another said I do not want to bring that we have no jurisdiction although my opinion is that we shall have jurisdiction. The third is my mind is in doubt, very, very happy in his decision. I am thinking once again whether there is jurisdiction or not. You will hear it in one month. I had no time because of this Council. Otherwise I would have brought it this week. There are cases in which simple order to a corporation my set right matters, and avoid many a litigation between the parties. In such cases a mandamus writ can be obtained and there are provisions in the Act, Specific Relief Act. There is a specific provision that an order may be asked to be issued either to an officer of the Government or to a corporation. According to my learned friend even that provision will go.

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A doubt has been caused that in the Specific Relief Act provisions are omitted for specific relief and therefore these powers are not in the Court. That is the index and the indication. What I wish to say is this. In the Specific Relief Act the provision was purposely omitted. The Court had inherent jurisdiction vested in it and there was no necessity to put it in the Specific Relief Act. Specific Relief Act in British India contain that provision and that was adopted in Cochin. Those great lawyers who adopted it and advised the Government have purposely omitted the section. Why? Copyists do not omit anything. Even mistakes are copied. And yet those jurists who advised the Government of Cochin at the time when the Specific Relief Act was adopted purposely omitted that section. Why? The answer is they were satisfied that the Chief Court of Cochin had inherent powers vested in them to act without that provision. That was the case in the High Courts of Madras, Bombay and Calcutta. Later on they thought that the Supreme Court like the kings had those powers. The High Court may not have those powers. Therefore they took away the inherent powers of the Supreme Court. This was taken away by inserting this provision in the Specific Relief Act. So practically they took up all the right under that Act and we are also sticking to that because you come and sit here. Because the High Court is in doubt. One yes, one no and the other between yes and no. We though we will clarify the position and therefore this amendment to the Speific Relief Act was tabled. Nothing wrong. Nothing for you to oppose and therefore I humbly submit that the Government would do well and will do honour to themselves and to the country by changing that position and trusting their judiciary whom they select with all powers known to the law and to which some times really speaking may have the painful necessity to resort to. Why deprive the Cochin subject of that privilege and right. Why dwindle us in the eyes of the world and say that we should be classified with Hyderbad. We know the conditions in Hyderabad. Why compare us with other State. Let us state our progress our advancement, our necessity and our desires. It is the desire of the House except the Government unfortunately that this provision shou'd be there. The necessity was felt seven years ago, once before and the necessity is felt even to-day. Why deprive of that privilege? Why not confer these rights on the people. What have the people done. It will only be very rare. It will relieve the Executive Government of many a charge of partiality to their own officers and holding up their own men. It is usually said that officers of Government will not easily give up their subordinates even if they are wrong. They may chastise them but outside they may be justifying. That is a right position of the executive and therefore we ask shall we examine? In any case it is clear that the entire non-official block is for a mandamus of this sort and therefore it is only right and proper for the Government who wishes to rule according to the will of the people expressed, to accept the amendment and to carry on the Government accordingly.

*Mr. A. V. Moothedan *(Chalakkudi)*: I support the motion. With great respect to the learned arguments advanced by the Hon'ble the Law Member I am unable to support the motion. Now the question before the House is whether the Specific Relief Act has to be amended in a particular way. Most of the arguments addressed by the Law Member could be addressed in the High Court. Whether the High Court has to be given these powers is not the question here. We are a legislative body and this House can pass resolutions. My learned friend went to the East India Company. That is all irrelevant here. For interpreting the meaning of the word writ we are not concerned. The question was raised whether the High Court had jurisdiction. All these arguments may be relevant to consider the interpretation of the Government of Cochin Act. Whether such a power is vested is not the question here. Here the question is whether the Specific Relief Act should be amended in a certain way conferring certain powers on the High Court. When such a position is taken up, the position of the learned Hon'ble Member for Law is beside the point. He has not raised any objection that if this Bill is passed the Government would be turned topsyturvy. He was stating about Charters only. We are not concerned with those things. We are concerned with this namely whether this House has power to pass any resolutions. Section 24 of the Government of Cochin Act says "Subject to the provisions of this Act, the Cochin Legislature may make laws for the whole of the Cochin State or any part thereof and for the subjects of His Highness wherever they may be". Therefore we have got absolute power to pass a Bill like this, and the objections raised by the Government are not relevant and to the point. About the hardship caused by the absence of such a provision, I shall cite one recent example. The Revising Committee of the Electoral Roll rejected the name of a person in the list on the ground that that person has not passed the School Final, though he says that he passed the School Final examination. That person's name is removed in the list. That person finds there is no remedy at all. If this Act is amended in a particular way that person can approach a Civil Court and ask the Court to issue

*Speech not corrected by the Hon'ble Member.

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a writ of mandamus to insert that name. But there is no remedy at all. His name may be included or not. I am not concerned with that. There should be a remedy. If a local body or a committee acts in a capricious manner or with some malice, what is the remedy ? No remedy. If this Bill is introduced with the object of having a remedy, there is nothing at all. No hardship or difficulty is caused to the Government in their normal work. The Court will not interfere unless there is prime malice. That is quite sure. Therefore there is absolutely no objection in passing this measure. The learned Advocate-General pointed out that there is a Maharaja. In British India there is no Maharaja. Then I ask why in England is this provision necessary. Why ? There is the King. They can go to the King at once. I do not quite follow the argument of the learned Law Member. Therefore, Sir, this is a legislative measure which the House has got a right to pass. Government may oppose. Those objections should be real. Therefore I request the House to consider the stand taken by the Government and pass this measure.

***Mr. K. Narayana Menon** *(Mulakunnathukavu)* : Sir, it is only consistent on the part of the Hon'ble Member for Law to oppose this Bill at this stage as it has been opposed by the Government from the very beginning. As adverted to by the Hon'ble Member for Law he has categorically given a statement in which he has practically gone back to all the items which he spoke on the previous occasion. I respectfully will submit a few words in answer and in the seriatum order in which he was pleased to place while opposing this. I submit I do not claim any special sacredness on the part of this Bill or anything in the nature of religious convention on the ground of antiquity, which was only respected by the East India Company or the forefathers of the East India Company. Here is a Bill before the Hon'ble House. Certain provisions have to be passed into law for the use of the Government and for the good of the subjects of the State. Dispassionately examine its provisions and see whether they are useful. If they are useful accept them. If they are useless, reject. Never mind their antiquity, never mind whether they are the property of successors of East India Company, or the High Court of Lahore and Bombay. All facts can be taken up for consideration. The main point is, is it a question of transference, of power is it a wise piece of legislation and is that legislation necessary and is it of any utility to the subjects of the State ? With these three points, view this piece of legislation and if the House thinks it unnecessary, throw it. If the House comes to the conclusion that it is necessary, accept and not go to the sentiments, subjects of history or subjects of antiquity. My submission is that the Hon'ble Member for Law has no right to make out that the Hon'ble High Court has no original civil jurisdiction. I respectfully invite the attention of the House to section 41 (10 sub-clause (c) of the Government of Cochin Act.)

Subject to the provisions of this Act, the High Court shall have and exercise, all the jurisdiction and powers vested in it by this Act and any other law which is in force or may he reafter come into force and all the jurisdiction and powers vested in the Chief Court including—

the power to withdraw and to try and to determine as a Court of original jurisdiction, any Civil Suit pending in any Court subordinate to it, either on the application of both the parties to the suit or for any good and sufficient cause after recording reasons for such transfer. Any suit so withdrawn shall be tried by a single Judge of the High Court and the decree therein passed shall be executed by the Court from which the suit was withdrawn as if it had been passed by itself and any order passed by the latter in executing such decree, shall be subject to the same rules in respect of appeal, as if the decree had been passed by such court. My respectful submission is that if this section permits it to be not a court of original jurisdiction but shall exercise jurisdiction over any original jurisdiction, have to submit that I cannot contribute to that argument. Again, Sir, our Court has also got original criminal jurisdiction under the provisions of clause (b) of the same Act in the same section. Therefore I submit that there is a power of appeal provided.

An appeal shall lie from the decree, sentence or order of the High Court to two Judges of such Court in any Civil Suit tried under clause (c) of sub-section (1) of section 41 or in any criminal case tried under clause (d) of sub-section (1) of section 41 of this Act.

Therefore, Sir, both original civil and criminal are conferred by the Act upon the High Court if and when they think it necessary. Therefore it is not a case of absence of jurisdiction but the option to exercise being left to the court. This the Hon'ble Court may exercise or may not exercise. In proper cases, they do not contemplate its application. If required they can exercise. That is the law of the land and therefore the question that there is no original jurisdiction and such other questions are foreign.

*Speech not corrected by the Hon'ble Member.

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I invite the attention of the Hon'ble House to Section 46 says "All writs, summons, precepts and rules and orders and other mandatory process to be used, issued or awarded by the High Court shall run and be in the name and style of His Highness the Maharaja of Cochin and shall be sealed with the seal of the High Court."

I think it cannot have any meaning except that they are to represent His Highness the Maharaja in all the powers of prerogative granted under this Act in the issue of writes and processes. Therefore, Sir, I submit that a further provision that it shall issue in the name and style of His Highness the Maharaja can imply one thing, that is all these orders are issued in the name of Royalty and therefore nobody can disobey that. But for that I cannot understand why such a provision is made in Section 46 of the Government of Cochin Act. Therefore, Sir, the learned arguments no doubt apparently convincing urged by the Hon'ble Member for Law do not satisfy me. I do not think it will satisfy this House that this is an unnecessary provision or something which is not called for. As regards the compactness of the area that you could relieve from the Executive Government within 3 or 4 hours, all these are foreign to the question, whether there is any necessity or right to apply for a write, Sir. When we are told that we want to give a judicial remedy to an Executive Act the Hon'ble Member for Law says "go to the same Executive Authority and you could get relief". That is something very foreign to the sense of judicial interpretation. My respectful submission is that none of the points urged for the oposition is tenable and I appeal to the Hon'ble House to allow this motion.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I may be allowed to say a few words by way of explanation because the statement made by the Hon'ble Member may bring about a misconception in the minds of the Hon'ble Members. I cannot understand how the Hon'ble Member for Mulakunnathukavu with his long experience at the Bar has been telling this House to-day that our High Court possesses original Civil jurisdiction.

Mr. V. K. Bhaskara Menon *(Cranganur):* We do not concede that. So you need not try to convince the House on that point.

Mr. M. Sivarama Menon *(Advocate-General):* The Hon'ble Member and those like him may not have any misconception but there may be others who may be carried away by this argument. In Salem Vs. S. K. Padiar the question has been examined in detail by the learned Judges who took part in the case.

Rao Sahib K. Ayyappan *(Ezhuvas-Ernakulam):* If there is no original Civil jurisdiction?

Mr. M. Sivarama Menon *(Advocate-General):* Then you must confer such jurisdiction first before thinking of passing this Bill.

Mr. President: The motion is carried.

Mr. A. B. Salem *(Mattancheri):* Poll, Sir.

Ayes

Messrs.
Mrs. K. Joshua
Khan Sahib Ismail Haji Issa Sait
B. M. Peter
K. R. Achuthan
C. V. Iyyu
Ephraim Ouseph
K. T. Achuthan
A. V. Moothedan
T. A. Ramachandra Ayyar
T. P. Poulose
V. K. Bhaskara Menon
K. Ashtamurthi Nambudripad
A. Eachara Menon
K. S. Panicker

Messrs.
P. P. Devassy
A. B. Salem
Rao Sahib K. Ayyappan
George Panikulam
Popatlal Govardhan Lal
P. Kumaran Ezhuthassan
C. K. Nayar
M. Krishna Menon
K. Kunhirama Menon
K. Narayana Menon
S. S. Koder
Govinda Pai
N. V. Subbarayan Chettiar
P. K. Krishnan

Noes

Rama Varma Tampuran
Mr. A. Madhava Prabhu
Rao Sahib I. N. Menon
Mr. P. V. Raphael
Rao Sahib Dr. T. Verghese
Mr. M. Sivarama Menon

Mr. B. V. K. Menon
Mr. C. J. Mathew
Khan Sahib Y. M. Roshan Sahib Bahdur
Rao Sahib M. M. Paul
Mr. S. Venketeswaran

Motion carried, 28 for and 11 against.

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Clauses 2 and 3 put and carried.

Clause 1 put and carried.

Title and Preamble put and carried.

Mr. K. Narayana Menon *(Mulakunnathukavu):* I beg to move that the Bill may be taken up and finally passed to-morrow.

Mr. A. B. Salem *(Mattancheri):* I second it.

Motion put and carried.

The Cochin Verumpattamdars Act (Amendment) Bill

Rao Sahib K. Ayyappan *(Ezhuvas-Ernakulam):* I beg to present the report of the Select Committee on the Cochin Verumpattamdars' Act (Amendment) Bill for the consideration of the House.

Mr. P. P. Devassy *(Trichur-South):* I second it.

Mr. V. K. Bhaskara Menon *(Cranganur):* On a point of order Sir, under Standing Order 35 a Bill if amended needs republication 12 days before the meeting and this particular Bill which is now being taken into consideration here has not been published 12 days previously.

Mr. President: It is quite correct that 12 days interval has not been given; but this being the last meeting of the Council I want to know whether the House is prepared to waive that notice.

Mr. V. K. Bhaskara Menon *(Cranganur):* Sir, my only point is that under S. O. 35 there is no discretion vested either in the Council or in the President to waive it. Under S. O. 37 you will be pleased to find that if a copy of report is not made available to the Members 12 days before a Member can raise an objection and that can be waived by the President. This Council has no power unless the S. O. is amended. There is a specific provision regarding that and I thought it would look funny if we ourselves violate the provisons of the law.

Mr. M. Sivarama Menon *(Advocate-Genaral):* I submit that the President has got the Power to suspend this provision Under S. O. 94 (1) the President has got the power, It says ".. ...but any member may object to its being so taken into consideration if a copy of the report has not been available for the use of the members for twelve days, or if three months have not elapsed from the date of the first publication of the Bill, and such objection shall prevail unless the President in the exercise of his power to suspend this provision allows the report to be taken into consideration". That provision applies to the Bill not part by part but as a whole, and this power of the President to suspend the provision may be exercised in this case. The peculiar circumstances of the case, deserve the exercise of such a discretion.

Mr. President: I think under the S. O. I can suspend the provision and allow the report to be taken into consideration.

* **Mr. K. Ashtamoorthi Nambudiripad** *(Landlord):* I rise to oppose this Bill. The object of the original Bill was to provide a remedy for the unbearable increase and inequitable decrease of the money value of the pattam of cocoanut gardens owing to abnormal fluctuations of the cocoanut market. But we cannot say that the provisions contained in the existing verumpattamdars' Act itself are inequitable. In the boom periods the landlord will get the benefit of the rise in prices. But during depression periods he will have to bear the disadvantages of a fall in prices also. The benefits and disadvantages of a rise or fall in prices be borne both by the landlord as well as the tenant.

Sir, the Cochin Verumpattamdars' Act was passed in the year 1118. Unfortunately there has begun, by this time a general rise in prices of agricultural commodities including cocoanuts. This happened to be a wind-fall to the land-holders and tenants do not want the jenmies to enjoy the benefits of this.

One argument the tenants may bring forward in support of this amendment would be, that during the depression period when the price of cocoanuts, when commuted to money, was very low, they were compelled to pay the money rent fixed in the lease-deed, and now when the price of cocoanuts has arisen they have to pay again a big amount according to the provisions of the Verumpattamdars' Act. I shall show you, Sir, that this argument is fallacious. The passing of the Agriculturists' Relief Act in 1114 gave relief to the tenants from the hardships caused by the inequitable decrease in the money value of the pattam. Moreover I can say from

* Speech not corrected be the Hon'ble Member

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